12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 657/2005

April 19, 2007

GEETA PANDEY ..... Petitioner
Through Mr. Rajat Aneja, Advocate

versus

MAYA PANDEY & ORS ..... Respondents
Through Mr. Dhanbir Singh, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat (Open Court)

1. The present revision petition is directed against an order of the Additional Sessions Judge dated 25th May, 2005. By that order, the Court allowed the revision of one of the accused, namely, Maya, who had been charged under Section 406 IPC.

2. The State's revision, in so far as it pertained to discharge of the offences under Section 406 IPC against all the three accused, namely, Maya, Rekha and Ganga was dismissed. The present petition has been preferred by the complainant wife.

3. The facts are that the marriage of the parties took place on 7th February, 1999. Two male children were born out of the wedlock when the couple lived together. It is

alleged that on account of acts of cruelty and dowry harassment, the petitioner complainant was compelled to move out of the matrimonial home on 17.5.2002. The matter was reported to CAW Cell on 3.5.2002 and it led to lodging of the First Information Report on 8.8.2002.

4. Mr. Aneja, learned counsel for the petitioner contended that the discharge of the three sisters-in-law named in the preceding paragraph was unjustified. He relied on the allegations in the statement recorded before the Police at the earliest opportunity, namely, 8.8.2002. Learned counsel urged that in one incident, the accused/respondent Maya clearly was implicated of physical abuse i.e. spilling of milk and also slapping the complainant. He took me through other allegations such as the petitioner's name, despite her status of married woman, not being recorded in the ration card of the family; all the articles of jewelleries kept in the matrimonial home after her leaving the same despite her request that it be returned to her and frequent acts of cruelty perpetrated by the husband on account of liquor as well as by other relatives. He also relied on some statements to say that threats were held out by the family members including the accused sisters-in-law in the event of her recording true facts to the police. Lastly, it was contended that the accused sisters-in-law and the other accused had to be charged of the offences because all allegations, read cumulatively relate to cruelty on their part and, therefore, the trial court as well as the revisional court fell into error in not charging them of that offence.

5. Learned counsel next relied upon the supplementary statement recorded by the complainant petitioner on 17.2.2004 to say that there were specific allegations that when the complainant/petitioner went back to the matrimonial home sometime in 2003 to

secure her jewellery, the accused, particularly, her sisters-in-law resisted and denied her access. It was contended that these clearly spelt out the ingredients of the offence under Section 406 IPC.

6. Mr. Dhanbir Singh, learned counsel for the respondent accused, who were discharged, contended on the other hand that the scope of the proceedings before the High Court was extremely narrow. The Court is confronted with views about the correctness of the approach as to whether the accused were at all culpable of the offences. The trial court had refused to charge the two accused, namely, Rekha and Ganga. The State's revision was dismissed. Therefore, the second revision, in these circumstances, under Section 393(3) was barred.

7. In any event, learned counsel contended that even if the courts were assumed to possess jurisdiction under Section 482, there are not exceptional features, emerging from the materials to warrant interference with such views. As far as the accusations against Maya are concerned, her revision to the Additional Sessions Judge, was correctly allowed. The Court, he submitted, correctly inferred that the solitary allegation about slapping and spilling of milk made against her had nothing to do with the dowry demand and that in any event same did not amount to cruelty. Learned counsel contended that in respect of the offence under Section 406 the accused were correctly is discharged since the courts were of the view that the materials pointed to entrustment of the dowry items and jewellery articles to the parent-in-law and, the sisters-in-law were nowhere mentioned in the statement. Learned counsel contended that the last statement recorded by the complainant was made at the fag end of the investigation just before the charge sheet was

filed and that appears to be the sole basis for roping the offence under Section 406 IPC.

8. I have considered the materials on record. The learned Additional Sessions Judge in the impugned order observed that it is not every harassment or every type of cruelty that would attract Section 498A IPC. The court considered the materials on record and concluded that the trial court was swayed by the statement that Maya, one of the sisters-in-law, who apparently was a young and unmarried woman at that stage abused the complainant and spilled some milk when water was thrown on her face. This single fact, however, was no different from the other allegations levelled against the two accused sisters-in-law who had been discharged, namely, Rekha and Ganga.

9. The allegations contained in the statement on 8.8.2002 and 17.2.2004, which in my considered opinion, are most material, at best general are in nature. They do not point to any specific act of cruelty, perpetrated by the sisters-in-law. The revisional court proceeded to set aside the order so far as it pertained to Maya; the State has chosen not carry that order further. So far as the offence of Section 406 is concerned, on of the foundational premises is the factum of entrustment, the revisional court held and in my view correct that the statements made by the petitioner only pointed to enstrustment of the articles with the parents-in-law and not either one of the sisters-in-law. The allegations made with regard to withholding of the rings was recorded on 17.2.2004. It is also on record that the complainant wife received Rs. 1 lakh during the pendency of the proceedings.

10. As observed in the preceding paragraph, revisional proceedings under Section 397 are not maintainable to test the revisional court's order. However, in such circumstances,

if the court is convinced that the materials before it point to miscarriage of justice, it is always open to it to secure the ends of justice as it were by exercising inherent jurisdiction under Section 482. The parameters of such jurisdiction are extremely circumscribed and far too well defined; tyh\\hey cannot be invoked here.

11. Having considered the materials on record and in view of the above discussion, I am of the view that no interference with the impugned order is called for.

12. The revision petition is accordingly dismissed.

S.RAVINDRA BHAT, J

APRIL 19, 2007
dkg